

REMARKS

Claims 11-14, 16, 18-19, 27-31 and 38-45 are pending in the application. Claim 31 is objected to because of an informality. Claims 11-14, 16, 18-19, 27-31 and 38-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,792,466 to Saulpaugh et al. in view of U.S. Patent No. 5,493,692 to Theimer et al.

Reconsideration is requested. No new matter is added. The rejections are traversed. Claims 11, 13-14, 16, 18-19, 29-30, and 40-45 are amended. Claims 11-14, 16, 18-19, 27-31 and 38-45 remain in the case for consideration.

In responding to the Applicant's arguments, the Examiner has baldly stated that the arguments have been considered but are deemed not persuasive. The Examiner has provided no explanation as to why the arguments are non-persuasive. Under MPEP § 707.07(f), the Examiner "should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it". Even form paragraph 7.37, which is used when the Examiner deems the arguments non-persuasive, indicates that in block [2], the Examiner should provide an explanation as to why the arguments were non-persuasive. Thus, the Examiner has failed to meet his burden under the MPEP.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Claim 11 is directed toward a network lurking agent operable in a system, the network lurking agent comprising: an inquirer designed to place an inquiry in a JavaSpace persistent store, the JavaSpace persistent store part of the system; and a lurker designed to retrieve from the JavaSpace persistent store a response to the inquiry to determine the availability of a user in an environment.

Claim 14 is directed toward a system designed to support network lurking, the system comprising: a JavaSpace persistent store; an environment setting stored in the JavaSpace persistent store, the environment setting including the availability of a device in an environment; a network receiving agent designed to receive an inquiry about the availability of the device in the environment from the JavaSpace persistent store; and a network lurking agent designed to place the inquiry in the JavaSpace persistent store.

Claim 42 is directed toward a method for using a network lurking agent to electronically lurk to an environment in a system, the method comprising: identifying an environment of interest; and placing an inquiry as to the availability of a user in the environment of interest in a JavaSpace persistent store, the JavaSpace persistent store part of the system.

Claim 44 is directed toward an apparatus for using a network lurking agent to electronically lurk to an environment in a system, the apparatus comprising: means for identifying an environment of interest; and means for placing an inquiry as to the availability of a user in the environment of interest in a JavaSpace persistent store, the JavaSpace persistent store part of the system.

In rejecting the claims, the Examiner has cited to Saulpaugh as teaching the concept of ““a space facility [that is] provided to which a client may register (or unregister) to obtain notification when something is added to or removed from the space”” (Office Action dated March 25, 2005, page 3). The Examiner uses this to suggest that Saulpaugh teaches the concept of a Space.

Unfortunately, Saulpaugh makes it clear that his “distributed computing environment” is distinguishable from the Space of the claims. Saulpaugh goes on for columns preaching about the limitations of Jini technology and JavaSpaces. Below are a few examples:

- “[F]or certain types of devices, Jini may not be appropriate” (column 3, lines 30-31).
- “Current distributed computing technologies, such as Jini, may not be scalable enough for the needs of all types of clients” (column 3, lines 52-54).
- “Existing connection technologies, such as Jini, may not be as scalable as desired because they are too big” (column 4, lines 4-5).
- “Serialization [*sic*] is too large, requiring a large amount of code. Also, serialization is a Java specific object interchange format and thus may not be used with non-Java devices” (column 5, lines 35-37).
- “[T]he Jini technology uses JavaSpaces as persistent object containers. However, a JavaSpace can only store Java objects and cannot be implemented in small devices. Each object in a JavaSpace is serialized and pays the above-described penalties associated with Java serialization” (column 6, lines 28-32).
- “Jini leases are time based which may result in a number of problems” (column 6, lines 44-45).
- “As discussed above, current technology, such as Jini, may not be practical . . . it may be desirable to locate services based on the physical location of the user and his mobile client” (column 7, lines 16-21).

As should be clear from the example quotations (all taken from the background section of Saulpaugh), Saulpaugh was designed to provide a functionality that Jini and

JavaSpaces could not provide. But the invention piggybacks directly off of the functionality that Saulpaugh decries: the use of a permanent store, such as JavaSpaces. That this is so can be found in the specification at page 4, lines 3-11. Further, that Saulpaugh professes the usefulness of being able to locate a user and his mobile client suggests that Jini and JavaSpaces do not and cannot provide this functionality. As this application shows, this functionality is possible with Jini and JavaSpaces; accordingly, Saulpaugh is teaching away from the invention, and the claimed invention achieves results that would be unexpected relative to the prior art. See *In re Geisler*, 116 F.3d 1465, 1469-71, 43 U.S.P.Q.2d 1362, 1366 (Fed. Cir. 1997). Therefore, the invention is not obvious in view of Saulpaugh, with or without Theimer.

This fact leads to two conclusions. First, because Saulpaugh teaches away from using JavaSpaces, a person skilled in the art, attempting to implement the claimed invention, would not combine Saulpaugh and Theimer. And second, if a person skilled in the art were to attempt to combine Saulpaugh and Theimer, the result would not be the claimed invention, because Saulpaugh teaches away from using JavaSpaces as a permanent store. These conclusions are discussed below.

No motivation to combine

A person skilled in the art, attempting to implement the invention, would not attempt to combine Saulpaugh and Theimer. As discussed above, Saulpaugh makes it clear that he considers JavaSpaces a technology inadequate to the task. Thus, someone reading Saulpaugh would conclude that JavaSpaces could not be used to implement a network lurking agent, or a system to support such a network lurking agent, and would make no such attempt. This also means that such a person would not be motivated to combine Saulpaugh with Theimer. Thus, the Examiner is incorrect in his assertion that there is a motivation to combine Saulpaugh and Theimer.

The result of combining Saulpaugh and Theimer would not be the claimed invention

As argued above, a person skilled in the art would not be motivated to combine Saulpaugh and Theimer. But let us consider the possibility that a person of ordinary skill in the art were to attempt to combine the references anyway (the Applicant is not acknowledging in any way that there is any motivation to make this combination). Because Saulpaugh describes in great detail the weaknesses of Saulpaugh, this hypothetical person would not use JavaSpaces as the space described in Saulpaugh. Instead, this hypothetical

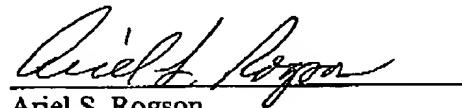
person would use the variety of space advocated by Saulpaugh, which would not be JavaSpaces. As stated by Saulpaugh at column 6, lines 29-30, "a JavaSpace can only store Java objects and cannot be implemented in small devices". Since Saulpaugh describes it as important to provide "a heterogeneous object repository for distributed computing that may scale from small to large devices" (column 6, lines 33-35), this hypothetical person would conclude that JavaSpaces is not the appropriate model for a persistent store, and would not use a JavaSpace as a persistent store. But that would mean that the resulting system the might be implemented by this hypothetical person would not be the claimed invention. Thus, the theoretical combination of Saulpaugh and Theimer would not be the claimed invention.

As the claims describe JavaSpaces permanent stores, from which Saulpaugh teaches away, the claims should therefore be allowable over Saulpaugh in view of Theimer.

For the foregoing reasons, reconsideration and allowance of claims 11-14, 16, 18-19, 27-31 and 38-45 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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